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HOUSE BILL 1262

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

G. X. MCSHERRY

AN ACT

RELATING TO WATER; NAMING THE NEW MEXICO DEPARTMENT OF
AGRICULTURE AS THE CONSTITUENT AGENCY FOR WATER QUALITY ISSUES
AND REGULATION OF THE AGRICULTURAL INDUSTRY; AMENDING AND
ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-6-4 NMSA 1978 (being Laws 1967,
Chapter 190, Section 4, as amended) is amended to read:

"74-6-4. DUTIES AND POWERS OF COMMISSION. -- The commission:

A. may accept and supervise the administration of
loans and grants from the federal government and from other
sources, public or private, which loans and grants shall not be
expended for other than the purposes for which provided;

B. shall adopt a comprehensive water quality
management program and develop a continuing planning process;

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1 C. shall adopt water quality standards for surface
2 and ground waters of the state subject to the Water Quality Act.
3 The standards shall include narrative standards and, as
4 appropriate, the designated uses of the waters and the water
5 quality criteria necessary to protect such uses. The standards
6 shall at a minimum protect the public health or welfare, enhance
7 the quality of water and serve the purposes of the Water Quality
8 Act. In making standards, the commission shall give weight it
9 deems appropriate to all facts and circumstances, including the
10 use and value of the water for water supplies, propagation of
11 fish and wildlife, recreational purposes and agricultural,
12 industrial and other purposes;

13 D. shall adopt, promulgate and publish regulations
14 to prevent or abate water pollution in the state or in any
15 specific geographic area, aquifer or watershed of the state or
16 in any part thereof, or for any class of waters, and to govern
17 the disposal of septage and sludge and the use of sludge for
18 various beneficial purposes. The regulations governing the
19 disposal of septage and sludge may include the use of tracking
20 and permitting systems or other reasonable means necessary to
21 assure that septage and sludge are designated for disposal in,
22 and arrive at, disposal facilities, other than facilities on the
23 premises where the septage and sludge is generated, for which a
24 permit or other authorization has been issued pursuant to the
25 federal act or the Water Quality Act. Regulations shall not

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1 specify the method to be used to prevent or abate water
2 pollution but may specify a standard of performance for new
3 sources that reflects the greatest reduction in the
4 concentration of water contaminants that the commission
5 determines to be achievable through application of the best
6 available demonstrated control technology, processes, operating
7 methods or other alternatives, including where practicable a
8 standard permitting no discharge of pollutants. In making
9 regulations, the commission shall give weight it deems
10 appropriate to all relevant facts and circumstances, including:

- 11 (1) character and degree of injury to or
12 interference with health, welfare, environment and property;
- 13 (2) the public interest, including the social
14 and economic value of the sources of water contaminants;
- 15 (3) technical practicability and economic
16 reasonableness of reducing or eliminating water contaminants
17 from the sources involved and previous experience with equipment
18 and methods available to control the water contaminants
19 involved;
- 20 (4) successive uses, including but not limited
21 to domestic, commercial, industrial, pastoral, agricultural,
22 wildlife and recreational uses;
- 23 (5) feasibility of a user or a subsequent user
24 treating the water before a subsequent use;
- 25 (6) property rights and accustomed uses; and

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(7) federal water quality requirements;

E. shall assign responsibility for administering its regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort. ~~[To this end]~~ The commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between constituent agencies as to jurisdiction concerning any matters within the purpose of the Water Quality Act. In assigning responsibilities to constituent agencies, the commission shall give priority to the primary interests of the constituent agencies. The department of environment ~~[shall]~~ may provide technical services, including certification of permits pursuant to the federal act, at the request of a constituent agency;

F. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act and receive and allocate to constituent agencies funds made available to the commission;

G. may grant an individual variance from any regulation of the commission whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may only grant a variance conditioned upon a person

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1 effecting a particular abatement of water pollution within a
2 reasonable period of time. Any variance shall be granted for
3 the period of time specified by the commission. The commission
4 shall adopt regulations specifying the procedure under which
5 variances may be sought, which regulations shall provide for the
6 holding of a public hearing before any variance may be granted;

7 H. may adopt regulations to require the filing with
8 it or a constituent agency of proposed plans and specifications
9 for the construction and operation of new sewer systems,
10 treatment works or sewerage systems or extensions, modifications
11 of or additions to new or existing sewer systems, treatment
12 works or sewerage systems. Filing with and approval by the
13 federal housing administration of plans for an extension to an
14 existing or construction of a new sewerage system intended to
15 serve a subdivision solely residential in nature shall be deemed
16 compliance with all provisions of this subsection;

17 I. may adopt regulations requiring notice to it or a
18 constituent agency of intent to introduce or allow the
19 introduction of water contaminants into waters of the state;

20 J. may adopt regulations establishing pretreatment
21 standards that prohibit or control the introduction into
22 publicly owned sewerage systems of water contaminants that are
23 not susceptible to treatment by the treatment works or that
24 would interfere with the operation of the treatment works;

25 K. shall not require a permit respecting the use of

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1 water in irrigated agriculture, except in the case of the
2 employment of a specific practice in connection with such
3 irrigation that documentation or actual case history has shown
4 to be hazardous to public health or the environment; and

5 L. shall coordinate application procedures and
6 funding cycles for loans and grants from the federal government
7 and from other sources, public or private, with the local
8 government division of the department of finance and
9 administration pursuant to the New Mexico Community Assistance
10 Act. "

11 Section 2. Section 74-6-5 NMSA 1978 (being Laws 1973,
12 Chapter 326, Section 4, as amended by Laws 1993, Chapter 100,
13 Section 3 and also by Laws 1993, Chapter 291, Section 5) is
14 amended to read:

15 "74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION. --

16 A. By regulation, the commission may require persons
17 to obtain from a constituent agency designated by the commission
18 a permit for the discharge of any water contaminant or for the
19 disposal or re-use of septage or sludge.

20 B. The commission shall adopt regulations
21 establishing procedures for certifying federal water quality
22 permits.

23 C. Prior to the issuance of a permit, the
24 constituent agency may require the submission of plans,
25 specifications and other relevant information that it deems

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1 necessary.

2 D. The commission shall by regulation set the dates
3 upon which applications for permits shall be filed and designate
4 the time periods within which the constituent agency shall,
5 after the filing of an administratively complete application for
6 a permit, either grant the permit, grant the permit subject to
7 conditions or deny the permit.

8 E. The constituent agency shall deny any application
9 for a permit or deny the certification of a federal water
10 quality permit if:

11 (1) the effluent would not meet applicable
12 state or federal effluent regulations, standards of performance
13 or limitations;

14 (2) any provision of the Water Quality Act
15 would be violated;

16 (3) the discharge would cause or contribute to
17 water contaminant levels in excess of any state or federal
18 standard. Determination of the discharges' effect on
19 groundwater shall be measured at any place of withdrawal of
20 water for present or reasonably foreseeable future use.
21 Determination of the discharges' effect on surface waters shall
22 be measured at the point of discharge; or

23 (4) the applicant has, within the ten years
24 immediately preceding the date of submission of the permit
25 application:

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1 (a) knowingly misrepresented a material
2 fact in an application for a permit;

3 (b) refused or failed to disclose any
4 information required under the Water Quality Act;

5 (c) been convicted of a felony or other
6 crime involving moral turpitude;

7 (d) been convicted of a felony in any
8 court for any crime defined by state or federal law as being a
9 restraint of trade, price-fixing, bribery or fraud;

10 (e) exhibited a history of willful
11 disregard for environmental laws of any state or the United
12 States; or

13 (f) had an environmental permit revoked
14 or permanently suspended for cause under any environmental laws
15 of any state or the United States.

16 F. The commission shall by regulation develop
17 procedures that [will] ensure that the public, affected
18 governmental agencies and any other state whose water may be
19 affected shall receive notice of each application for issuance
20 or modification of a permit. No ruling shall be made on any
21 application for a permit without opportunity for a public
22 hearing at which all interested persons shall be given a
23 reasonable chance to submit data, views or arguments orally or
24 in writing and to examine witnesses testifying at the hearing.

25 G. The commission may adopt regulations for the

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1 operation and maintenance of the permitted facility, including
2 requirements, as may be necessary or desirable, that relate to
3 continuity of operation, personnel training and financial
4 responsibility, including financial responsibility for
5 corrective action.

6 H. Permits shall be issued for fixed terms not to
7 exceed five years, except that for new discharges, the term of
8 the permit shall commence on the date the discharge begins, but
9 in no event shall the term of the permit exceed seven years from
10 the date the permit was issued.

11 I. By regulation, the commission may impose
12 reasonable conditions upon permits requiring permittees to:

13 (1) install, use and maintain effluent
14 monitoring devices;

15 (2) sample effluents and receiving waters for
16 any known or suspected water contaminants in accordance with
17 methods and at locations and intervals as may be prescribed by
18 the commission;

19 (3) establish and maintain records of the
20 nature and amounts of effluents and the performance of effluent
21 control devices;

22 (4) provide any other information relating to
23 the discharge or direct or indirect release of water
24 contaminants; and

25 (5) notify a constituent agency of the

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1 introduction of new water contaminants from a new source and of
2 a substantial change in volume or character of water
3 contaminants being introduced from sources in existence at the
4 time of the issuance of the permit.

5 J. The commission shall provide by regulation a
6 schedule of fees for permits, not exceeding the estimated cost
7 of investigation and issuance, modification and renewal of
8 permits. Fees collected pursuant to this section shall be
9 deposited in the water quality management fund; provided,
10 however, that fees collected by the New Mexico department of
11 agriculture as the constituent agency for the agricultural
12 industry pursuant to Section 3 of this act shall be remitted to
13 the department.

14 K. The issuance of a permit does not relieve any
15 person from the responsibility of complying with the provisions
16 of the Water Quality Act, any applicable regulations or water
17 quality standards of the commission or any applicable federal
18 laws, regulations or standards.

19 L. A permit may be terminated or modified by the
20 constituent agency that issued the permit prior to its date of
21 expiration for any of the following causes:

- 22 (1) violation of any condition of the permit;
- 23 (2) obtaining the permit by misrepresentation
24 or failure to disclose fully all relevant facts;
- 25 (3) violation of any provisions of the Water

1 Quality Act or any applicable regulations, standard of
2 performance or water quality standards;

3 (4) violation of any applicable state or
4 federal effluent regulations or limitations; or

5 (5) change in any condition that requires
6 either a temporary or permanent reduction or elimination of the
7 permitted discharge.

8 M If the constituent agency denies, terminates or
9 modifies a permit or grants a permit subject to condition, the
10 constituent agency shall notify the applicant or permittee by
11 certified mail of the action taken and the reasons.

12 N. A person who participated in a permitting action
13 before a constituent agency or a person affected by a
14 certification of a federal permit and who is adversely affected
15 by such permitting action or certification may file a petition
16 for hearing before the commission. The petition shall be made
17 in writing to the commission within thirty days from the date
18 notice is given of the constituent agency's action. Unless a
19 timely request for hearing is made, the decision of the
20 constituent agency shall be final.

21 O. If a timely petition for hearing is made, the
22 commission shall hold a hearing within ninety days after receipt
23 of the petition. The commission shall notify the petitioner and
24 the applicant or permittee if other than the petitioner by
25 certified mail of the date, time and place of the hearing. If

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1 the commission deems the action that is the subject of the
2 petition to be affected with substantial public interest, it
3 shall ensure that the public receives notice of the date, time
4 and place of the hearing and [~~shall be~~] is given a reasonable
5 chance to submit data, views or arguments orally or in writing
6 and to examine witnesses testifying at the hearing. A person
7 submitting data, views or arguments orally or in writing shall
8 be subject to examination at the hearing. In the hearing, the
9 burden of proof shall be upon the petitioner. The commission
10 may designate a hearing officer to take evidence in the hearing.
11 Based upon the evidence presented at the hearing, the commission
12 shall sustain, modify or reverse the action of the constituent
13 agency.

14 P. If the petitioner requests, the hearing shall be
15 recorded at the cost of the petitioner. Unless the petitioner
16 requests that the hearing be recorded, the decision of the
17 commission shall be final. "

18 Section 3. A new section of the Water Quality Act is
19 enacted to read:

20 " [NEW MATERIAL] AGRICULTURAL INDUSTRY--DEPARTMENT OF
21 AGRICULTURE IS CONSTITUENT AGENCY. --The New Mexico department of
22 agriculture is the constituent agency for water classification
23 and water quality issues arising from the agricultural industry
24 and shall regulate the agricultural industry on all matters
25 pertaining to the Water Quality Act. For purposes of this

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1 section, "agricultural industry" includes dairy farmers, milk
2 producers, other livestock production and feeding facilities and
3 farm crop production facilities. "

4 Section 4. A new section of Chapter 76, Article 1 NMSA
5 1978 is enacted to read:

6 "[NEW MATERIAL] DEPARTMENT OF AGRICULTURE-- CONSTITUENT
7 AGENCY FOR WATER QUALITY OF AGRICULTURAL INDUSTRY. --The New
8 Mexico department of agriculture shall be the constituent agency
9 of the water quality control commission for water classification
10 and water quality issues of the agricultural industry and shall
11 regulate the agricultural industry on all matters pertaining to
12 the Water Quality Act. For purposes of this section,
13 "agricultural industry" includes dairy farmers, milk producers,
14 other livestock production and feeding facilities and farm crop
15 production facilities. "